

# FEDERAL COMMUNICATIONS COMMISSION

## 49 CFR Part 25

### Satellite Communications

**AGENCY:** Federal Communications Commission

**ACTION:** Final rule; technical amendment.

**SUMMARY:** These technical amendments are being made to correct errors that have been identified by the Agency in the Code of Federal Regulations.

**EFFECTIVE DATE:** September 24, 1990.

**FOR FURTHER INFORMATION CONTACT:** Rosalee Chiara (202) 634-1781

Part 25 of title 47 of the Code of Federal Regulations is amended as follows:

## PART 25—[AMENDED]

1. The authority citation for part 25 is revised to read as follows:

Authority: Sections 101-404, 76 Stat 419-427, 47 U.S.C. 701-744 Sec 4, 48 Stat 1068, as amended, 47 U.S.C. 154 Interpret or apphes sec 303, 48 Stat. 1082, as amended, 47 U.S.C 303.

2. All authority citations at the subpart or sectional levels in part 25 are removed.

Federal Communications Commission.

Donna R. Searcy,  
Secretary

[FR Doc. 90-22575 Filed 9-21-90; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

## 49 CFR Part 173

[Docket No. HM-201B; Amendment No 173-222]

RIN 2137-AB39

### Shippers; Use of Tank Car Tanks With Localized Thin Spots; Corrections and Response to a Petition for Reconsideration

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule, corrections and response to a petition for reconsideration.

**SUMMARY:** This document makes certain corrections to a final rule, regarding the use of tank car tanks with localized thin spots, issued under Docket HM-201B (January 5, 1990; 55 FR 422). In addition,

this document responds to a petition for reconsideration.

**EFFECTIVE DATE:** September 24, 1990.

This rule is being made effective immediately because it merely corrects minor discrepancies in existing regulations.

#### FOR FURTHER INFORMATION CONTACT:

Philip Olekszyk, Deputy Associate Administrator for Safety, Federal Railroad Administration, RRS-2, Washington, DC 20590, Telephone (202) 366-0897.

**SUPPLEMENTARY INFORMATION:** On January 5, 1990 (55 FR 422), RSPA published a correction document to a final rule issued under Docket HM-201B (February 28, 1989, 54 FR 8336), concerning the use of tank car tanks with localized thin spots. In § 173.31(a)(11)(vi) and (ix) of the final rule, certain tanks were erroneously referred to as "DOT specification 206W tank car tanks" instead of "AAR 206W tank car tanks". Also, in § 173.31(a)(11)(vi) of the final rule, the phrase "lower half of the outer shell" is used. The correct phrases should be "lower half of the heads of the tank car tank" and "the lower half of the heads of the outer shell of a class DOT 115 tank car tank or an AAR 206W tank car tank." These errors are corrected in this document.

In the preamble of the correction document (page 422), under a discussion entitled "Meaning of part 179 Standards", RSPA stated, in part:

RSPA and FRA have concluded that the shell thickness issue can be resolved only through a careful rulemaking process exploring all aspects of the issue. . . . DOT has a current, companion rulemaking proceeding, Docket HM-201, in which these issues will be resolved. An NPRM under that docket addressing these issues will be issued soon. Until a final rule emerges in that docket, the shell thickness requirements specified in part 179, as amended, by this final rule, are the minimum in service shell thickness requirements throughout the life of a tank car.

The Railway Progress Institute (RPI) objected to these comments. RPI petitioned RSPA to "reconsider its position as announced on January 5, 1990, that tank shell thickness requirements apply during the life of the tank car and that it defer issuing an interpretation of its regulations until the completion of rulemaking HM-201, in which the tank shell thickness issue may be addressed with the benefit of a full record."

RSPA's position that the shell thickness of a tank car tank may not fall below the required minimum thickness prescribed by part 179 is consistent with that for other bulk packagings, such as

cargo tanks. On April 7, 1983 (48 FR 15127), RSPA published a Rule Related Notice concerning continuing qualification of cargo tanks. In that document, shippers and motor carriers offering hazardous materials in cargo tanks were made aware that:

. . . the minimum thickness requirement . . . is an essential function in determining the continuing qualification of a cargo tank as an authorized packaging. For example, if an MC 310 cargo tank has a capacity of 2000 gallons, its minimum thickness may be no less than 3/8 inch. If the tank is less than 3/8 inch at any point, e.g., as a result of internal or external corrosion, it may no longer be marked "MC 310" on its identification plate nor may it be used as a specification cargo tank under the HMR.

RSPA takes this same position with respect to tank car tanks with localized reductions in wall thickness. The amendments issued on January 5, 1990, under HM-201B, grant relief to shippers by permitting the use of certain railroad tank car tanks with shell thickness in localized areas that otherwise would not conform to the applicable specifications.

The procedures set forth in 49 CFR 106.35 provide for persons to petition for reconsideration of any regulation issued. These procedures prescribe that the petition must contain an explanation as to why compliance with the rule is not practicable, is unreasonable, or is not in the public interest. In its petition, RPI offers no objection to amendments allowing tank car tanks with localized reductions of shell thickness due to tank repairs to continue in service. Instead, RPI's petition pertains to a statement found in the preamble discussion rather than a regulation issued under HM-201B. Therefore, the petition is denied.

Furthermore, although RPI seeks reconsideration of the preamble language in the January 5, 1990 correction document as a "new" interpretation, the RSPA position objected to was apparent when the rulemaking in HM-201B began in 1987. As noted in the preamble to the final rule issued February 28, 1989, commenters had raised the issue of whether the minimum tank car shell thickness required by the specification applied to cars in use. (See 54 FR 8337.) The answer then and now is that the rules now require maintenance of the requirements of the specification, but that the merits of required maintenance of tank car tank shell thickness will be fully explored in Docket HM-201. Thus the study submitted with RPI's petition here ("Railroad Tank Car Safety Assessment" prepared by Failure Analysis Associates) will be considered in that rulemaking.

## Administrative Notices

RSPA has determined that this rulemaking (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental entities; and (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

A regulatory evaluation developed for Amendment No. 173-208 is available for review in the Docket. This rule does not change the assessments made in that regulatory evaluation.

Based on information concerning the size and nature of entities likely to be affected by this final rule, I certify that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. I have reviewed this regulation in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effects on States, on the Federal-State relationship, or on the distribution of power and responsibilities among levels of government. Thus, this

regulation contains no policies that have Federalism implications as defined in Executive Order 12612 and, therefore, no Federalism Assessment has been prepared.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Regulatory Agenda.

## List of Subjects in 49 CFR Part 173

Hazardous materials transportation, packaging and containers.

In consideration of the foregoing, 49 CFR part 173 is amended as follows.

## PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1806, 1807, and 1808; 49 CFR part 1.

2. In § 173.31, paragraphs (a)(11)(vi) and (a)(11)(ix) are revised to read as follows:

§ 173.31 Qualification, maintenance, and use of tank cars.

(a)

(11)

(vi) There are no reductions in shell thickness on the lower half of the heads of—

(A) The tank car tank; or

(B) The outer shell of a class DOT 115 tank car tank or an AAR 206W tank car tank;

(ix) For a class DOT 115 tank car tank or an AAR 206W tank car tank, there are no reductions in the thickness of the inner tank.

Issued in Washington, DC on September 18, 1990, under authority delegated in 46 CFR 1.53

Travis P. Dungan,  
Administrator, Research and Special Programs  
Administration

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